



# Indiana Department of Education

151 West Ohio Street  
Indianapolis, Indiana 46204

## MEMORANDUM

**TO:** State Board of Education

**FROM:** Jeff Zaring, State Board Administrator

**DATE:** October 27, 2010

**SUBJECT:** LSA Document #10-502, Accountability Measures for School Performance and Improvement

On October 29, 2010, Board members Gabet and Elsener and Department staff members Jeff Zaring and Matt Tusing will conduct a public hearing on LSA Document #10-502, which provides procedures for technical assistance and interventions under IC 20-31-9. We will report on the hearing at the Board meeting on November 3.

The proposed rule and fiscal impact are attached.



# Indiana Department of Education

151 W. Ohio St.  
Indianapolis, Indiana 46204

## MEMORANDUM

**TO:** Sean Reilly, State Budget Agency  
**FROM:** Jeff Zaring, Administrator, State Board of Education  
**DATE:** August 27, 2010  
**SUBJECT:** Proposed LSA Rule # 10-502 – Fiscal Analysis/Cost Benefit Analysis

The Indiana State Board of Education proposes LSA Document No. 10-502, amending and adding to Title 51 IAC 6.2, for purposes of establishing accountability measures for school performance and improvement. This memo serves as the fiscal impact statement required under IC 4-22-2-28 and Financial Management Circular (FMC) #2006-1. This memo serves as the Cost Benefit Analysis required under FMC #2006-2.

### Statement of Need

Proposed Rule #10-502 is necessary to prevent chronically failing schools from providing the identical or similar services year-after-year for students who continue to underperform compared to their counterparts statewide. Currently, students at schools in the fifth year after initial placement in the “academic probation” category have consistently performed in the bottom 25<sup>th</sup> percentile of Indiana’s public school students.

Proposed Rule #10-502 requires the department to conduct a quality review of schools in the third year after initial placement in the academic probation category. The Rule requires the department to advise the school corporation of strengths and weaknesses, and most importantly, the steps necessary for the successful turnaround of the school.

If schools reach the sixth year of continual placement in “academic probation,” the Rule allows the State Board to replace the management and operation of the school through an “intervention.” Indiana Code § 20-31-9-4 allows the State Board to assign “a special management team to operate all or part of the school.” The Rule allows the Board to appoint an outside manager to operate all or part of a school, including the use of powers of charter schools, exemption of collective bargaining contracts, and advanced student enrollment requirements.

Twenty-three Indiana schools are currently on their fifth year of academic probation. If these schools fall into academic probation, or the F category of P.L 221 placement during the 2010-2011 school year, the State Board may under the authority of IC 20-31-9-4 and this Rule intervene in the operation of these schools as soon as 2011-2012 school year.

### Evaluation of benefits and costs

#### Direct Benefits

*Improved Student Learning:* The Rule provides flexibility for the Board to determine the best intervention for improved student learning, demonstrated by performance measurements required under Indiana Code 20-31-9, and allows the Board to adopt an intervention that best fits the needs of a particular community or school-level situation. But almost all major models of successful turnaround, including the transformation, turnaround, restart, and school closure models, require the quick replacement of personnel or school closure.<sup>1</sup>

The single most important factor in student learning is teacher effectiveness.<sup>2</sup> For rapid improvement of student learning, school-level case studies demonstrate that the flexibility to shift teachers, administrators, and other school resources quickly is a prerequisite for success<sup>3</sup> and often leads to improved student test results.<sup>4</sup> To provide an opportunity for tangible improvements to student learning, the Rule provides flexibility to adapt teacher appointments to students' needs and does not require an outside manager to employ teachers and administrators who are recognized in the collective bargaining contract.<sup>5</sup> Also, the Rule allows an outside manager to hold employees and students accountable within an accelerated time frame.<sup>6</sup>

Additionally, the Rule allows managers to find the best teachers available in the state: under the Rule, teachers may take a leave of absence from an Indiana school corporation to teach at a school operated by an outside manager and not lose seniority at the original corporation.

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<sup>1</sup> Press Release, U.S. Department of Education, **U.S. Department of Education Videos Highlight Successful School Turnarounds**, <http://www2.ed.gov/news/pressreleases/2010/04/04152010f.html> (last visited Aug. 20, 2010).

<sup>2</sup> Andrew J. Rotherham, *Achieving Teacher and Principal Excellence*, p. 15, Available at <http://www.philanthropyroundtable.org/files/TeacherExcellence.pdf> (last visited Aug. 20, 2010) ("Current studies indicate that, among in-school factors, teacher effectiveness is the single most important factor in student learning."), Robert Gordon, Thomas J. Kane, Douglas O. Staiger, *Identifying Effective Teachers Using Performance on the Job*, Brookings Institute p. 8, Available at [http://www.brookings.edu/~media/Files/rc/papers/2006/04education\\_gordon/200604hamilton\\_1.pdf](http://www.brookings.edu/~media/Files/rc/papers/2006/04education_gordon/200604hamilton_1.pdf) (last visited Aug. 20, 2010) ("Having a top-quartile teacher rather than a bottom quartile teacher four years in a row would be enough to close the black-white test score gap.").

<sup>3</sup> *The Turnaround Challenge: Why America's best opportunity to dramatically improve student achievement lies in our worst performing schools*, Mass Insight Education and Research Institute, p. 36, Available at [http://www.massinsight.org/publications/turnaround/51/file/1/pubs/2010/04/15/TheTurnaroundChallenge\\_MainReport.pdf](http://www.massinsight.org/publications/turnaround/51/file/1/pubs/2010/04/15/TheTurnaroundChallenge_MainReport.pdf) (last visited Aug. 20, 2010) (Schools "need broad, local authority over core resources – people, time, money, and program – in order to continually tailor instruction for individual students, maneuver against daily turbulence, and improve their staff."), See also U.S. Department of Education, *Guidance on School Improvement Grants*, p. 18, Available at <http://www2.ed.gov/programs/sif/sigguidance05242010.pdf> (last visited Aug. 20, 2010).

<sup>4</sup> In some extraordinary cases, test scores have quickly risen 43-47%. See <http://www.massinsight.org/stg/research/turnaround-case-studies/>.

<sup>5</sup> See U.S. Department of Education successful turnaround models. The turnaround model encourages states to "[r]eplace the principal, screen existing school staff, and rehire no more than half the teachers; adopt a new governance structure; and improve the school through curriculum reform, professional development, extending learning time, and other strategies." <http://www2.ed.gov/news/pressreleases/2010/04/04152010f.html>; See also Federal Urban Policy from United Neighborhood Centers of America, <http://unca-acf.org/?p=2834>.

<sup>6</sup> See <http://www.aei.org/docLib/02-23911%20EduO%20Feb%2009-g.pdf>

### Indirect Benefits

The Rule provides students with a number of indirect benefits, including an increased sense of urgency and importance placed on their education through an increase in community involvement and engagement. For example, the Rule requires the State Board to engage the local public to offer suggestions on the best methods and most important changes to raise the quality of education provided.

### Costs

*To State Government:* The Rule is revenue-neutral to state government. With respect to interventions, the department intends to transfer funds from chronically failing school corporations to the entity that will provide the services under the intervention. The responsibility to provide these services shifts to an outside manager or other entity; so, too, do the per-pupil federal, state, and local funds. No additional state funds will be used.

Additionally, the department will provide third-year quality reviews with current resources.

*To School Corporations:* For school corporations that have a school in academic probation for six consecutive years, the Rule will likely create a fiscal impact greater than \$500,000; however, the schools corporations will lose the responsibility to provide an educational program to the students who generate the funds that will be transferred. The department believes it is unlikely that the General Assembly would have allowed the board to appoint an outside manager on the one hand while continuing to pay the corporation for the student's whose education now is the responsibility of the outside manager on the other hand. The Rule requires the department to withhold state support, local funds, and federal funds necessary to implement State Board interventions. The amount of the withholding is wholly dependent on the scope of the intervention and directly related to the funding the corporation receives for the affected students.

As an example of possible impacts to school corporations, the following numbers represent two sample schools, both of which are currently in their fifth year of academic probation. The data represents the state support and local funds eligible for withholding based on per-pupil spending. Note that this estimate is for demonstrative purposes only and does not imply that the intervention will require withholding all or any of these eligible funds.

For these two school corporations, the fiscal impact would range from \$6 million to \$8 million. It is important to note that 100% of those funds are invested in the technical assistance and management of the schooling provided for those particular students.

	School A	School B	Source:
	0.3030	0.0790	% high school students to total # students
Tuition Support	\$4,476,350.00	\$6,934,948.22	Based on CY distr. of state tuition support: DOE 54/per ADM amount

	\$71,325.00	\$237,768.25	Did not have count of Voc Ed students; based on proportionate share of CY distr. of state tuition support: DOE 54/total grant
<b>Career Tech Education</b>			
	\$114,250.00	\$0.00	Based on CY distr. of state tuition support: DOE 54/estimated by breaking funding into a per pupil amount
<b>Restoration Grant</b>			
	\$233,478.00	\$496,272.00	Requested information from Special education for School B only.
<b>Special Education</b>			
<b>Total</b>	<b>\$4,895,403.00</b>	<b>\$7,668,988.47</b>	
	\$225,890.39	\$	proportionate share based on # high school students and prorating the funding reduction in tuition support categories
<b>Less Funding Reduction</b>		378,293.82	
<b>Net Total</b>	<b>\$4,669,512.61</b>	<b>\$7,290,694.64</b>	
	\$	\$	July 1 - Dec. 31, 09 Form 9: prorated by % HS students to total # students
<b>General</b>	1,362,529.13	616,018.53	
	\$	\$	July 1 - Dec. 31, 09 Form 9: prorated by % HS students to total # students
<b>CPF</b>	(116,279.15)	67,479.31	
	\$	\$	July 1 - Dec. 31, 09 Form 9: prorated by % HS students to total # students
<b>Transportation</b>	308,971.86	395,811.20	
	\$	\$	July 1 - Dec. 31, 09 Form 9: prorated by % HS students to total # students
<b>Bus Repl.</b>	90,345.69	38,906.75	
	\$	\$	July 1 - Dec. 31, 09 Form 9: prorated by % HS students to total # students
<b>Rainy Day</b>	325,673.89	-	
	\$	\$	July 1 - Dec. 31, 09 Form 9: prorated by % HS students to total # students
<b>Lunch</b>	2,416.57	309,005.32	
	\$	\$	July 1 - Dec. 31, 09 Form 9: prorated by % HS students to total # students
<b>Textbook</b>	(63,152.47)	(243,865.87)	
	\$	\$	
<b>Total</b>	<b>1,910,505.52</b>	<b>1,183,355.23</b>	
	\$	\$	
<b>Grand Total</b>	<b>6,580,018.13</b>	<b>8,474,049.87</b>	

### **Examination of Alternatives**

Maintain the Status Quo – Students at schools in the fifth year of initial placement in the “academic probation” category have consistently performed in the bottom 25<sup>th</sup> percentile of Indiana’s public school students. Allowing schools continued opportunity to improve in light of their history of failure is not a viable option.

**Conclusion**

The indirect and direct benefits justify the costs of the Rule because the status quo will not improve student learning at Indiana's lowest performing schools. Indiana Code 20-31-9 requires performance measurement of schools and calls on the State Board to intervene on behalf of students of the consistently failing schools. The funding transfer is revenue-neutral to state government, and all funds withheld are directly applied to the school intervention. For these reasons, the Rule is justified.

Attachment:        Proposed Rule No. 10-502.

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TITLE 511 INDIANA STATE BOARD OF EDUCATION

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**Proposed Rule**  
LSA Document #10-502

## DIGEST

Adds [511 IAC 6.2-8](#) to define the applicability of the rule, to require the state board of education to direct the department of education to conduct quality review of schools subject to [IC 20-31-9-3](#), and to allow the department to offer to enter a memorandum of agreement to an affected school corporation. Adds [511 IAC 6.2-9](#) to define the applicability of the rule, to require the state board to hold a public hearing to hear testimony on possible intervention options, to allow the state board to implement one or more described intervention options, to describe the pupils eligible for services provided as a result of board intervention, to establish the powers and exemptions of an outside manager appointed by the board to operate all or part of a school, to require the school corporations to continue debt service, transportation, food service, capital projects, or other services, to establish outside manager employment requirements and employee benefits, to require a school corporation to provide a leave of absence for teachers electing to teach at an affected school, and to prohibit school corporations from taking certain adverse actions toward the outside management or outside operation of a school. Effective January 1, 2011.

[IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses](#)[511 IAC 6.2-8](#); [511 IAC 6.2-9](#)

SECTION 1. [511 IAC 6.2-8](#) IS ADDED TO READ AS FOLLOWS:

**Rule 8. Consequences; Quality Review**[511 IAC 6.2-8-1](#) Applicability

Authority: [IC 20-19-2-8](#); [IC 20-31-9-4](#)

Affected: [IC 20-31-9-3](#)

**Sec. 1. This rule applies to schools subject to [IC 20-31-9-3](#).**

*(Indiana State Board of Education; [511 IAC 6.2-8-1](#))*

[511 IAC 6.2-8-2](#) Quality review

Authority: [IC 20-19-2-8](#); [IC 20-31-9-4](#)

Affected: [IC 20-31-9-3](#)

**Sec. 2. (a) The state board shall direct that the department conduct a quality review of a school that is subject to [IC 20-31-9-3](#).**

**(b) The department shall determine the scope of the review and appoint an expert team under [IC 20-31-9-3](#).**

*(Indiana State Board of Education; [511 IAC 6.2-8-2](#))*

[511 IAC 6.2-8-3](#) Memorandum of agreement

Authority: [IC 20-19-2-8](#); [IC 20-31-9-4](#)

Affected: [IC 20-31-9-3](#)

**Sec. 3. (a) Subsequent to a review conducted under section 2 of this rule, the department may offer the affected school corporation the opportunity to enter into a memorandum of agreement developed by the**

department.

(b) The memorandum of agreement must include the following:

- (1) Student outcomes the school expects to achieve.
- (2) Specific improvement in performance measures determined by the department.

(Indiana State Board of Education; [511 IAC 6.2-8-3](#))

SECTION 2. [511 IAC 6.2-9](#) IS ADDED TO READ AS FOLLOWS:

#### **Rule 9. Consequences; State Board Action**

##### **[511 IAC 6.2-9-1](#) Applicability**

Authority: [IC 20-19-2-8](#); [IC 20-31-9-4](#)

Affected: [IC 20-31-9-3](#)

Sec. 1. This rule applies to schools that become subject to state board action under [IC 20-31-9-4](#).

(Indiana State Board of Education; [511 IAC 6.2-9-1](#))

##### **[511 IAC 6.2-9-2](#) Hearing**

Authority: [IC 20-19-2-8](#); [IC 20-31-9-4](#)

Affected: [IC 20-31-9-3](#)

Sec. 2. The state board shall hold at least one (1) public hearing in the school corporation where the school is located to consider and hear testimony concerning options for providing a quality education to the affected students.

(Indiana State Board of Education; [511 IAC 6.2-9-2](#))

##### **[511 IAC 6.2-9-3](#) Options for improvement**

Authority: [IC 20-19-2-8](#); [IC 20-31-9-4](#)

Affected: [IC 20-31-8](#); [IC 20-31-9-3](#)

Sec. 3. If the state board determines, after conducting the public hearing described in section 2 of this rule, that intervention will improve the education received by the affected students, the state board may implement one (1) or more of the following options:

- (1) Merge the school with a nearby school that is in a higher category of school improvement under [IC 20-31-8](#) and [511 IAC 6.2-6](#).
- (2) Assign an individual or organization to operate all or part of the school.
- (3) Implement the department's recommendations for improving the school.
- (4) Implement other options for school improvement expressed at the public hearing, including closing the school.
- (5) Revise the school's plan in any of the following areas:
  - (A) School procedures or operations.
  - (B) Professional development.
  - (C) Intervention for individual teachers or administrators.

(Indiana State Board of Education; [511 IAC 6.2-9-3](#))

##### **[511 IAC 6.2-9-4](#) Funding**

Authority: [IC 20-19-2-8](#); [IC 20-31-9-4](#)

Affected: [IC 20-31-9-3](#); [IC 20-43-4-1](#)

Sec. 4. (a) The affected students shall remain eligible pupils under [IC 20-43-4-1](#).

(b) The state board shall receive the recommendations of the department and determine the amounts of state support, local funds, and federal funds that are necessary to fund the option or options for improvement implemented by the state board.

(c) The department shall do the following:

(1) Withhold the amount determined under subsection (b) from state support and federal funds otherwise to be distributed to the school corporation on account of the affected students.

(2) Enter into any contracts necessary to implement the option or options for improvement implemented by the state board, including contracts with an outside manager.

(3) Make payments under the contracts with funds withheld from the school corporation under this section.

(Indiana State Board of Education; [511 IAC 6.2-9-4](#))

#### [511 IAC 6.2-9-5](#) Outside manager

Authority: [IC 20-19-2-8](#); [IC 20-31-9-4](#)

Affected: [IC 20-24-8](#); [IC 20-26-11-6](#); [IC 20-28-6-3](#); [IC 20-31-9-3](#); [IC 20-43-4-1](#)

Sec. 5. (a) This section applies if the state board assigns an individual or organization as an outside manager to operate all or part of an existing school subject to [IC 20-31-9-4](#).

(b) The outside manager has the powers and exemptions of a charter school under [IC 20-24-8](#).

(c) The outside manager is not required to do the following:

(1) Bargain collectively with the employees of the school.

(2) Employ teachers and administrators through teacher contracts established by the state superintendent of public instruction under [IC 20-28-6-3](#).

(d) The outside manager may exercise any authority granted by the state board.

(e) The outside manager must accept for enrollment a student who meets all of the following:

(1) The student is enrolled in:

(A) one (1) of the grade levels served by the school, if the outside manager operates the entire school; or

(B) the grade level or program operated by the outside manager if the outside manager operates part of the school.

(2) The student has legal settlement within attendance area of the school as defined by the school corporation at the time the school becomes subject to intervention under [IC 20-31-9-4](#).

(f) The outside manager may accept for enrollment, without regard to school attendance areas defined by the school corporation, a student who meets all of the following:

(1) The student is enrolled in one (1) of the grade levels served by the school.

(2) The student has legal settlement within the school corporation.

(g) The outside manager may accept a student who has legal settlement outside the corporation if all of the following are true:

(1) The student is enrolled in one (1) of the grade levels served by the school.

(2) The school corporation has a policy to accept students without payment of transfer tuition as permitted by [IC 20-26-11-6](#).

A student who is accepted under this section is an eligible pupil under [IC 20-43-4-1](#).

(Indiana State Board of Education; [511 IAC 6.2-9-5](#))

**[511 IAC 6.2-9-6](#) Outside manager; debt service; transportation; food service; capital projects; other services**

Authority: [IC 20-19-2-8](#); [IC 20-31-9-4](#)

Affected: [IC 20-20-5](#); [IC 20-26-12](#); [IC 20-31-9-3](#); [IC 20-35](#)

Sec. 6. (a) The corporation shall continue debt service payments on corporation debt attributable to the school.

(b) The department, the school corporation, and the outside manager shall enter into a contract specifying the length of time, level of services, and entity responsible for providing necessary services to the school and students in the school, including, but not limited to, the following services:

- (1) Transportation.
- (2) Food service.
- (3) Educational and administrative technology and technology support.
- (4) Special education services under [IC 20-35](#) and [511 IAC 7](#).
- (5) Career and technical education services under [IC 20-20](#) and [511 IAC 8](#).
- (6) Custodial, maintenance, groundskeeping, and other services.
- (7) Instructional services in a particular curriculum area.
- (8) Textbooks and supplemental materials under [IC 20-20-5](#), [IC 20-26-12](#), and [511 IAC 9](#).
- (9) Student services under [511 IAC 4](#).
- (10) Extracurricular activities.

(c) The corporation and outside manager may enter into a contract or contracts for additional services.

(d) The department shall resolve disputes that arise in negotiation or execution of the contract under subsection (b). The decision of the department shall be the final administrative decision.

(Indiana State Board of Education; [511 IAC 6.2-9-6](#))

**[511 IAC 6.2-9-7](#) Outside manager; employment; employee benefits**

Authority: [IC 20-19-2-8](#); [IC 20-31-9-4](#)

Affected: [IC 5-10.3](#); [IC 5-10.4](#); [IC 20-31-9-3](#)

Sec. 7. (a) The outside manager shall employ teachers, other school personnel, and independent contractors that are:

- (1) described in the contract between the department and the outside manager; and
- (2) necessary for the outside manager to fulfill its responsibilities under this rule.

(b) Personnel employed by the outside manager under this section are entitled to participate in insurance benefits offered by the outside manager or offered to state employees.

(c) Personnel employed by the outside manager are entitled to participate in:

- (1) a retirement program offered by the outside manager;
- (2) the state teachers' retirement fund created by [IC 5-10.4](#); or
- (3) the public employees' retirement fund created by [IC 5-10.3](#).

(Indiana State Board of Education; [511 IAC 6.2-9-7](#))

**[511 IAC 6.2-9-8](#) Outside manager; leave of absence**

Authority: [IC 20-19-2-8](#); [IC 20-31-9-4](#)

Affected: [IC 20-28](#); [IC 20-31-9-3](#)

**Sec. 8. (a) The school corporation must grant a leave of absence to a teacher of a school in the school corporation who wishes to teach and has been accepted to teach at a school located within the boundaries of the corporation and operated by an outside manager.**

**(b) During the term of the leave of absence under subsection (a), the teacher's:**

**(1) seniority status under law continues as if the teacher were an employee of a school in the school corporation; and**

**(2) years as an employee of the school operated by the outside manager shall not be considered for purposes of permanent or semipermanent status with the school corporation under [IC 20-28-6](#), [IC 20-28-7](#), or [IC 20-28-8](#).**

*(Indiana State Board of Education; [511 IAC 6.2-9-8](#))*

**[511 IAC 6.2-9-9](#) Actions adverse to outside manager; real and personal property; failure to fulfill requirements of rule**

**Authority: [IC 20-19-2-8](#); [IC 20-31-9-4](#)**

**Affected: [IC 20-31-9-3](#)**

**Sec. 9. (a) The school corporation shall take no action adverse to the outside manager's operation of the school.**

**(b) The school corporation shall take no action to dispose of or cloud the title of the real property on which the school is located.**

**(c) The school corporation shall not remove or dispose of personal property located in the school or, if located outside the school, assigned to the school.**

**(d) If the state board determines that the school corporation has:**

**(1) taken an action or actions prohibited by subsections (a) through (c); or**

**(2) refused without just cause to enter into the contract required under section 6(b) of this rule;**

**the board may order the department to withhold additional state funds otherwise to be distributed to the school corporation in order to permit the outside manager to operate the school notwithstanding the prohibited or refused action.**

*(Indiana State Board of Education; [511 IAC 6.2-9-9](#))*

**[511 IAC 6.2-9-10](#) Outside manager; redistricting; assignment of students**

**Authority: [IC 20-19-2-8](#); [IC 20-31-9-4](#)**

**Affected: [IC 20-31-9-3](#)**

**Sec. 10. (a) The school corporation shall not, without the agreement of the outside manager, change the assignment of students to schools in the school corporation in such a way that the number or grade level or levels of students assigned to the school are changed significantly.**

**(b) If the outside manager agrees to accept additional students as permitted in this rule, the state board, on application of the outside manager, may determine that the outside manager needs additional funds to operate the school.**

**(c) The department shall withhold the amount determined under subsection (b) from state support and federal funds otherwise to be distributed to the school corporation.**

*(Indiana State Board of Education; [511 IAC 6.2-9-10](#))*

SECTION 3. SECTIONS 1 and 2 of this document take effect January 1, 2011.

[Notice of Public Hearing](#)

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An [html](#) version of this document.